No.

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES SISSON,

Petitioner,

v.

DANA PREISTER,

Respondent.

On Petition for Writ of Certiorari to the District of Columbia Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether Petitioner's right to Due Process guaranteed by the Fourteenth Amendment was denied him?

PARTIES TO THE PROCEEDING

Petitioner is Charles Sisson. He is appellant in the Court of Appeals and a defendant in the D.C. Superior Court. Respondent is Dana Preister. He is an appellee in the Court of Appeals and plaintiff in the Superior Court. Robert Cerullo, Esquire and his law firm, Houlon & Berman, are appellees in the Court of Appeals and co-defendants in the Superior Court.

TABLE OF CONTENTS

Page

Question Presented for Review i

Parties to the Proceeding i

Table of Contents.....i

Table of Cited Authorities.....iii

Table of Appendices.....vii

Citations of Opinions Below 1

Jurisdiction 1

Constitutional Provisions 1

Statement of the Case.....2

Factual Background.....5

Reasons for Granting the Writ.....15

I. The Court of Appeals Decision Eviscerates the Statute of Frauds 15

II. Court of Appeals Decision Violates Petitioner's Right to Due Process.....23

A. Petitioner's Substantive Due Process Rights Have Been Violated.....25

B. The Parties Failed to Agree on Profit Sharing or Financial Contributions.....28

C. Even the Proposed Members of Any Joint LLC Kept Changing..... 29

Conclusion 30

TABLE OF CITED AUTHORITIES

Page

Cases:

Bank of Columbia v. Okely, 4 Wheat. 235-244 (1819).....13

Belmont Realty Corp. v. Rhode Island Hosp. Trust Nat'l Bank, 116 B.R. 21 (Bankr. D.R.I. 1990).....19

Chamberlain v. Barry, 606 A.2d 156 (D.C. 1992).....21

Chatman v. Lawlor, 831 A.2d 395 (D.C. 2003).....21

Cook v. Edgewood Mgmt. Corp., 825 A.2d 939 (D.C. 2003).....21

Coan v. Orsinger, 265 F.2d 575 (D.C. Cir. 1959).....18

Collins v. Harker Heights, 503 U.S. 115 (1992).....27

County of Sacramento v. Lewis, 523 U.S. 833 (1998).....14.

Croley v. Republican National Committee, 759 A.2d 682 (D.C. 2000).....12

Daniels v. Williams, 474 U.S. 327 (1986).....14, 27

Davidson v. Cannon, 474 U.S. 344, 348 (1986).....27

DeShaney v. Winnebago County Dept. of Social Servs., 489 U.S. 189, 196 (1989).....27

District of Columbia v. Barriteau, 399 A.2d 563 (D.C. 1979).....12

Doe v. Binker, 492 A.2d 857 (D.C. 1985).....12

Edmund J. Flynn Co. v. LaVay, 431 A.2d 543 (D.C. 1981).....26

Fitzgerald v. Hunter Concessions, 710 A.2d 863 (D.C. 1998).....21

Fuentes v. Shevin, 407 U.S. 67 (1972).....13

Giaccio v. Pennsylvania, 382 U.S. 399 (1966).....30

Hackney v. Morelite Construction, D.C. Corp., 418 A.2d 1062 (D.C. 1980).....15

Howard Univ. v. Lacy, 828 A.2d 733 (D.C. 2003).....27

Hughes v. Pender, 391 A.2d 259 (D.C. 1978).....12

Hurtado v. California, 110 U.S. 516 (1884).....13

In re U.S. Office Prod. Co. Sec. Litig., 251 F. Supp.2d. 58 (D.C. 2003) 28, 29

International Cargo Mgmt. Specialists, Inc. v. EG & G Dynatrend, Inc., 1995 WL 170376 (D.D.C. 1995).....25, 28, 29

Jack Baker, Inc. v. Office Space Dev. Corp.,
664 A.2d 1236 (D.C. 1995).....25, 27

Kosower v. Gutowitz, 2001 WL 1488440
(S.D.N.Y. Nov. 21, 2001).....29

Landow v. Georgetown-Inland West Corp.,
454 A.2d 310 (D.C. 1982).....20, 21

Marathon Enter. Inc. v. H. Angelo and Co., Inc.,
229 F.3d 1143 (4th Cir. 2000).....28

Massion v. Mt. Sinai Congregation, 276 P. 930
(Wyo. 1929).....19

Morgan v. Psychiatric Inst. of Washington,
692 A.2d 417 (D.C.1997).....12

Novecon v. Bulgarian-American Enter. Fund,
190 F.3d 556 (D.C. Cir. 1999).....28

Penick v. Frank E. Basil, Inc., 579 F. Supp. 160
(D.D.C. 1984).....29

Perry v. Gallaudet Univ., 738 A.2d 1222 (D.C. 1999).....21

Railan v. Katyal, 766 A.2d 998 (D.C. 2001).....21, 22

Romer v. District of Columbia, 449 A.2d 1097
(D.C. 1982).....12

Simon v. Circle Assoc., Inc., 753 A.2d 1006
(D.C. 2000).....25, 29

Tauber v. District of Columbia, 511 A.2d 23 (D.C. 1986).....15

Washington v. Glucksberg, 521 U. S. 702 (1997).....27

Wolff v. McDonnell, 418 U.S. 539 (1974).....13

Zinermon v. Burch, 494 U.S. 113 (1990).....27

Statutes and Rules:

28 U.S.C. § 1257(a) 1

D.C Code § 28-3502.....3, 16

D.C. Code § 29-1002.....3, 4, 19

D.C. Code § 42-1903.16.....17

United States Constitution:

Fifth Amendment.....1

Fourteenth Amendment.....1, 14, 27

Other Authority:

3 Williston on Contracts § 448 at 344 (3d ed. 1960). 15

37 C.J.S. *Frauds, Statute of* § 44 (2003).....18.

TABLE OF APPENDICES

APPENDIX A -- OPINION OF THE D.C. COURT OF APPEALS DATED AND DECIDED SEPTEMBER 26, 2005.....1a

APPENDIX B -- VERDICT SHEET OF JURY OF D.C. SUPERIOR COURT DATED NOVEMBER 26, 2002.....12a

APPENDIX C -- JUDGMENT OF D.C. SUPERIOR COURT DATED NOVEMBER 26, 2002.....17a

APPENDIX D -- ORDER OF D.C. SUPERIOR COURT DATED JULY 24, 2003.....20a

APPENDIX E -- EXCERPTS FROM TRIAL TRANSCRIPTS DATED NOVEMBER 2002.....23a

PETITION FOR WRIT OF CERTIORARI

Charles Sisson respectfully petitions the Supreme Court for a writ of certiorari to review the judgment of the D.C. Court of Appeals in this case.

CITATIONS OF OPINIONS BELOW

The September 26, 2005 Opinion of the D.C. Court of Appeals (App. 1-11) affirming the D.C. Superior Court's judgment entered (App. 17-19) on a jury verdict (App. 12-16) is unpublished as noted at 883 A.2d 156; 2005 D.C. App. LEXIS 608 (table) (D.C. 2005).

JURISDICTION

The judgment of the D.C. Court of Appeals was entered on September 26, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

The Due Process Clause of the Fifth Amendment of the United States Constitution provides in relevant part: "No person shall ... be deprived of life, liberty or property, without due process of law ...."

The Due Process Clause of the Fourteenth Amendment provides in relevant part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal

protection of the laws."

STATEMENT OF THE CASE

Petitioner was denied Due Process. Charles Sisson, who served in the U.S. Army during the Vietnam War, has had a distinguished career as a senior economist for the International Monetary Fund for over 25 years, and holds a Ph.D. in economics. This petition seeks review of the Court of Appeals' affirmance of the $650,000 judgment of the D.C. Superior Court (App. 17-19) on a jury verdict (App. 12-16)[1] against Petitioner in favor of Respondent Dana Preister ("Preister") on a claimed oral contract. A full nine months after an apartment building was purchased by Mr. Sisson's limited liability company, Mr. Preister claimed to be 50% owner in the multi-million dollar condominium conversion project undertaken by Mr. Sisson, by virtue of an alleged oral contract, steadfastly denied by Mr. Sisson. The judgment is not supportable in the trial record and is shocking to the conscience. Furthermore, the decision of the Court of Appeals is predicated on a fundamental Due Process defect detailed below.

Mr. Preister is a general contractor and operates a construction company, MidCounty Construction Corporation ("MidCounty"). Prior to this project, he and his wife had been discharged from a Chapter 13 bankruptcy petition filed in the U.S. Bankruptcy Court for the District of Maryland, Greenbelt Division, and had no funds or credit to speak of. Mr. Preister had no basis to be admitted as a 50% partner in a multi-million dollar real estate venture. His entire claim

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[1] The jury found Mr. Sisson liable to Mr. Preister on theories of breach of contract, breach of fiduciary duty, and fraud, and awarded compensatory damages in the amount of $650,000.00 to Mr. Preister. (App. 12.) Petitioner's motion for a new trial was denied. (App. 20-22.)

hinged on his claimed oral contract with Mr. Sisson relating to an acquisition and condominium conversion project at 1417 Chapin Street, N.W., Washington, D.C., the renovation of a shell building, conversion to a 24-unit condominiums, and sale to the public. Respondent's claim to the oral contract was pure fiction and was refuted by Preister's four proposed agreements, each with different proposed terms, for a joint limited liability company that Mr. Sisson refused to sign. Mr. Preister's subsequent written drafts contradicted what he claimed as the oral contract.

Prior to trial, Mr. Sisson timely moved for summary judgment under the Statute of Frauds, for failure of the parties to agree on material terms, and other grounds. The claims should have been summarily dismissed under the Statute of Frauds, D.C Code § 28-3502 (1981), where the claimed oral contract as to the purchase of the apartment building, its renovation and condominium conversion, and sale to the public, could not have been performed in less than one year. D.C Code § 28-3502 provides: "an action may not be brought ... upon an agreement that is not to be performed within one year from the making thereof, unless the agreement upon which the action is brought, or a memorandum or note thereof, is in writing." Mr. Preister testified that the condominium conversion project would take approximately five years to perform. (App. 28-30) No condominium conversion in the District of Columbia can be completed in less than one year, as Respondent's own testimony established and as the terms of the Mr. Preister's draft agreements demonstrated.

The Statute of Frauds requirements were buttressed by the writing and filing requirements of D.C. Code § 29-1002 that limited liability companies may only be formed by signed articles of organization filed with the Mayor. A limited

liability company cannot be formed orally. In the proceedings below, Mr. Preister conceded he had not filed any signed articles of organization for any joint limited liability company with the Mayor of the District of Columbia -- a clear requirement of the District of Columbia Limited Liability Company Act of 1994, D.C. Code § 29-1002 (2001).

In addition, notwithstanding the Court of Appeals' conclusory statement that "there was agreement as to all of the material terms" (App. 8), the parties did not agree on any of the following material terms for a binding contract: 1) the ownership allocation or profit and loss split; 2) the financial contribution each was to make; 3) who would be contracting party, Mr. Preister or MidCounty; 4) whether Mr. Preister would be afforded the right to buy out Mr. Sisson before construction began, as Mr. Preister claimed in his testimony; and 5) whether Mr. Sisson was to ensure Mr. Preister against losses, as Mr. Preister claimed. Significantly, the Court of Appeals concluded that "[t]here was no agreement to form an LLC." (App. 8.) How could there be a binding contract without agreement as to the basic form of the business, affecting profits, taxation and liabilities of the owners? Without an agreement as to each and every material term, there could be no binding contract.

The failure to agree on material terms was presented in the summary judgment motion and should have resulted in dismissal before trial. Although the Pretrial Order stated that "the court will issue a written memorandum and order when the outstanding motions have been decided," the trial court did not do so, effectively depriving Petitioner of dispositive legal defenses. At the start of trial, the court cursorily ruled that all pending pretrial motions were denied.